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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,263	02/24/2004	Harushi Muramatsu	040034	1218

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EXAMINER

LE, HUNG CHARLIE

ART UNIT	PAPER NUMBER
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3663

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/25/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/784,263	MURAMATSU ET AL.	
	Examiner	Art Unit	
	Hung C. Le	3663	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 - 8 is/are pending in the application.
- 4a) Of the above claim(s) 3 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2 and 4 is/are rejected.
- 7) ☒ Claim(s) 5 - 8 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/29/2006 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1, 2 & 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With regard to claim 1:

The term "...at predetermined sampling periods..." is vague/unclear. It is not known

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what all is meant and encompasses by the terms "predetermined, sampling periods" as to what standard is based on. Therefore, it makes the claim indefinite.

Claim 1 recites the limitation "the time" in line 6. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "the speed" in line 12. There is insufficient antecedent basis for this limitation in the claim.

The term "...at prescribed number of times of consecutive sampling periods..." is vague/unclear. It is not known what all is meant and encompasses by the term "prescribed, sampling periods" as to what standard is based on. Therefore, it makes the claim indefinite.

With regard to claim 2:

Claim 2 recites the limitation "the newest running route" in 2. There is insufficient antecedent basis for this limitation in the claim.

With regard to claim 5:

The term "...at predetermined sampling periods..." is vague/unclear. It is not known what all is meant and encompasses by the terms "predetermined, sampling periods" as to what standard is based on. Therefore, it makes the claim indefinite.

Claim 5 recites the limitation "the time" in line 8. There is insufficient antecedent basis for this limitation in the claim.

Claim 5 recites the limitation "the speed" in line 14. There is insufficient antecedent basis for this limitation in the claim.

Claim 5 recites the limitation "the outside" in line 16. There is insufficient antecedent basis for this limitation in the claim.

Claim 5 recites the limitation "the arrival" in line 20. There is insufficient antecedent basis for this limitation in the claim.

The term "...a desired notifying point..." is vague/unclear. It is not known what all is meant and encompasses by the terms "desired" as to what standard is based on. Therefore, it makes the claim indefinite.

The term "...at predetermined notifying command..." is vague/unclear. It is not known what all is meant and encompasses by the terms "predetermined" as to what standard is based on. Therefore, it makes the claim indefinite.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 2, 4 (claim 3 was cancelled by applicant) are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones (5,623,260) in view of Lamb (6,184,802).

Regarding claim 1, Jones discloses (Fig. 1) a touring bus running route acquisition system includes a getting-on/off point (bus stops) comprising: on the side of the touring bus (VCU 12) includes geographical position acquisition means (Fig. 1 shows a GPS positioning system 25e) for acquiring the geographical position of the bus (19) at predetermined sampling periods (Fig. 4B shows the time line of the scheduled bus route) (Column 5, line 65 to column 6, line 6; and column 9, lines 59-65); time acquisition means (Fig. 4B show the planned route event time) for acquiring the time when the geographical position is acquired (Column 9, lines 21-28) (furthermore, it is well-known in the art that the GPS would give the geographical position as well as the time of the position); and terminal side communicating means (Figs. 2, 3A and 3B show the transceiver 18)

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having a function of wireless-transmitting the position and time thus acquired (Column 7, lines 42-59).

On the side of the user (both of the base station control unit (BSCU) 14 and passenger location 36 are the side of the user), a bus data acquisition means (BSCU 14) for acquiring the geographical position and time provided by the touring bus (VCU 12) (Fig. 5 shows the time (step 54) and position of the bus (event list 73 includes the past and current bus locations) (Column 13, lines 46-48); and a getting-on/off point (bus stops) specifying means (BSCU 14) for specifying the bus stops on the basis of position and time (Column 2, lines 42-51).

While patent drawings are not drawn to scale, relationships clearly shown in the drawings of a reference patent cannot be disregarded in determining the patentability of claims. See In re Mraz, 59 CCPA 866, 455 F.2d 1069, 173 USPQ 25 (1972).

Jones fails to disclose a latitude/longitude acquiring means, however the geographic position of the bus is acquired by a GPS. Jones also fails to disclose the getting-on/off point (bus stop) based on the speed equal to zero which excludes points where the touring bus comes to a complete stop due to traffic conditions.

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However, Lamb teaches (Fig. 2) a GPS receiver (201) determines time and location in terms of latitude and longitude of the vehicle's position (Column 5, lines 63-66). Lamb also teaches the getting-on/off point (bus stop) based on the speed (when velocity = 0) computed from the latitude/longitude and time (Column 5, line 63 to column 6, line 28).

Therefore, it would have been obvious to a person of ordinary skill in the art to use the GPS unit for determining the location of all stops, as taught by Lamb, into the touring bus notification system Jones to provide users with a real-time estimation of the time of arrival of vehicles at user selected sites.

Regarding to the negative limitation, "excludes points where the touring bus comes to a complete stop due to traffic conditions", Jones discloses that his bus progresses along a schedule rout with particular stop locations (i.e., not just any stop due to traffic jam) (Column 2, lines 42-46). Jones further discloses (Fig. 2) a door sensor (25b) can be used to count the number of door operations (opening/closing) of the front door (24) of the school bus (19), which should correspond with the number of stops" (i.e., getting on/off points) (Column 5, lines 58-61).

Therefore, based on the above teachings, it is obvious to a person of ordinary skill in the art to recognize that Jones only determines the getting on/off point

based on the particular bus stops, but not at the stop points due to traffic jam.

Furthermore, the negative limitation, "excludes points where the touring bus comes to a complete stop due to traffic conditions", rendered the claim indefinite because it was an attempt to claim the invention by excluding what the inventor did not invent rather than distinctly and particularly pointing out what they did invent. In re Schechter, 205 F. 2d 185, 98 USPQ 144 (CCPA 1953).

Regarding claim 2, it would have been obvious to the person of ordinary skill in the art to recognize that the touring bus running route acquisition system of Jones can calculate the number of bus stops based on different running routes or newest route.

Furthermore, Lamb also discloses a number of different routes can be recorded (Column 7, line 58 to column 8, line 7).

Regarding claim 4, Lamb further discloses storage means (read/write memory 307) for storing the running route (Column 7, line 58 to column 8, line 5).

Furthermore, it is obvious that when a user wants to store a file in a memory, he must have a file name for that file.).

6. Claim 5 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

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Claims 6 - 8 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claims 6 – 8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. The statements of intended use or field of use, e.g., “for acquiring, having, for specifying, for storing, for permitting, for notifying, for comparing, wherein, etc...” clauses are essentially method limitations or statements of intended or desired use. Thus, these claims as well as other statements of intended use do not serve to patentably distinguish the claimed structure over that of the reference. See In re Pearson, 181 USPQ 641; In re Yanush, 177 USPQ 705; In re Finsterwalder, 168 USPQ 530; In re Casey, 512 USPQ 235; In re Otto, 136 USPQ 458; Ex parte Masham, 2 USPQ 2nd 1647.

See MPEP § 2114 which states:

A claim containing a “recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from the prior art apparatus” if the prior art apparatus teaches all the structural limitations of the claim. Ex parte Masham, 2 USPQ 2nd 1647 .

Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than functions. In re Danly, 120 USPQ 528, 531.

Apparatus claims cover what a device is not what a device does. Hewlett-Packard Co. v. Bausch & Lomb Inc., 15 USPQ2d 1525, 1528.

As set forth in MPEP § 2115, a recitation in a claim to the material or article worked upon does not serve to limit an apparatus claim.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hung C. Le whose telephone number is 571-272-8757. The examiner can normally be reached on M-F: 07:30am - 05:00 pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack W. Keith can be reached on 571-272-6878. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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HCL

01/20/07

JACK KEITH
SUPERVISORY PATENT EXAMINER